

Appl. No.: 10/693,154
Reply to Office Action of dated October 4, 2005

BEST AVAILABLE COPY**REMARKS/ARGUMENTS**

The Office Action of October 4, 2005 rejected all of the pending claims of the above-identified patent application. Specifically, the Examiner rejected Claim 1 as anticipated by van Doerner *et al.*, Claims 4-9 and 14 as anticipated by Swenson *et al.*, and Claim 10 as anticipated by Zegeer. The Examiner also rejected Claims 2-3 and 11-12 as rendered obvious by Swenson *et al.* Additionally, the Examiner rejected Claims 14 – 15 as obvious over the combination of Swenson *et al.* and Wilkerson. The Examiner rejected Claim 16 as rendered obvious over Zegeer. The Examiner also rejected Claims 4 and 8, as well as their dependent Claims 5 – 7 and 9 as indefinite due to an inconsistency between the preamble and the limitations recited thereafter.

The Applicant respectfully traverses each of the Examiner's prior art grounds for rejection and respectfully submits that the Examiner has not set forth a *prima facie* showing of either anticipation or obviousness. The Applicant further submits that the amendments to Claims 4 - 12 have obviated the basis for the rejection of those claims as indefinite. Therefore, each of the present rejections must be withdrawn.

Support for the Amendments

This response amends Claims 1 and 4 -12. The Applicant respectfully submits that the amendments are well supported by the specification as originally filed.

The amendment to Claim 1 clarifies the limitations that (a) the bracket is mounted on the back of the chair at least about six inches above the plane of the top of the seat; and (b) the armrest support has a portion rotatably mounted within the bracket cavity and another portion that extends from the bracket to a position on either the right or the left of the user. The Applicant respectfully submits that support for each of these limitations in the application, as

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originally filed, would be clear to one of ordinary skill. For instance, paragraph 0144 clearly supports the limitation that the bracket is mounted at least about six inches above the plane of the top of the seat. Additionally, Fig. 17 clearly shows an armrest support with a portion rotatably mounted within the bracket cavity and another portion that extends from the bracket to a position on either the right or the left of the user. Thus, the Applicant respectfully submits that the amendment to Claim 1 is adequately supported by the specification as originally filed.

The amendment of Claims 4 – 12 changes the preamble from an armrest to a chair having an armrest. That the present application, as originally filed, clearly disclosed a chair having an armrest is beyond question. See for example, FIG. 3-4. Thus, the Applicant respectfully submits that the amendments to Claims 4 – 12 are adequately supported by the specification as originally filed.

Claim 10 has also been amended to more clearly describe and point out the subject matter the Applicant regards as his invention. Claim 10 as amended states that the bracket for the armrest is fixedly mounted to the chair back at a position behind a user's back. This structure is shown in, for instance, Fig. 17. Claim 10 was also amended to state that the armrest raises and lowers the armrest body. This structure can be seen for instance in Figs. 11 – 16. In view of such disclosures in the application as originally filed, the Applicant respectfully submits that the amendments to claim 10 are adequately supported.

In sum, the Applicant respectfully submits that each of the amendments are well supported by the application as originally filed.

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The Indefiniteness Rejections

The examiner rejected Claims 4-9 as indefinite because of an alleged inconsistency between the preamble of the independent claims and the recited limitations. The Applicant has re-written the preambles and respectfully submits that the re-written preambles obviate any basis for this rejection.

The Rejections alleging Anticipation

As noted above, in the April 8, 2005 Office Action, the Examiner rejected Claim 1 as anticipated by Doerner *et al.*, Claims 4-9 and 14 as anticipated by Swenson *et al.*, and Claim 10 as anticipated by Zegeer. For the followings reasons, the Applicant respectfully traverses the Examiner's rejections.

The Doerner et al. Reference

The Applicant respectfully submits that the Doerner *et al.* reference does not disclose the claimed subject matter. For instance, Doerner *et al.* does not disclose a bracket mounted on the back of said chair. Furthermore, Doerner *et al.* does not disclose an armrest that can be raised and lowered. For these reasons, the Applicant respectfully submits that the Examiner's rejection of Claim 1 as anticipated by the Doerner *et al.* reference does not establish that the claim subject matter is anticipated. Therefore, the Applicant requests that this rejection be withdrawn.

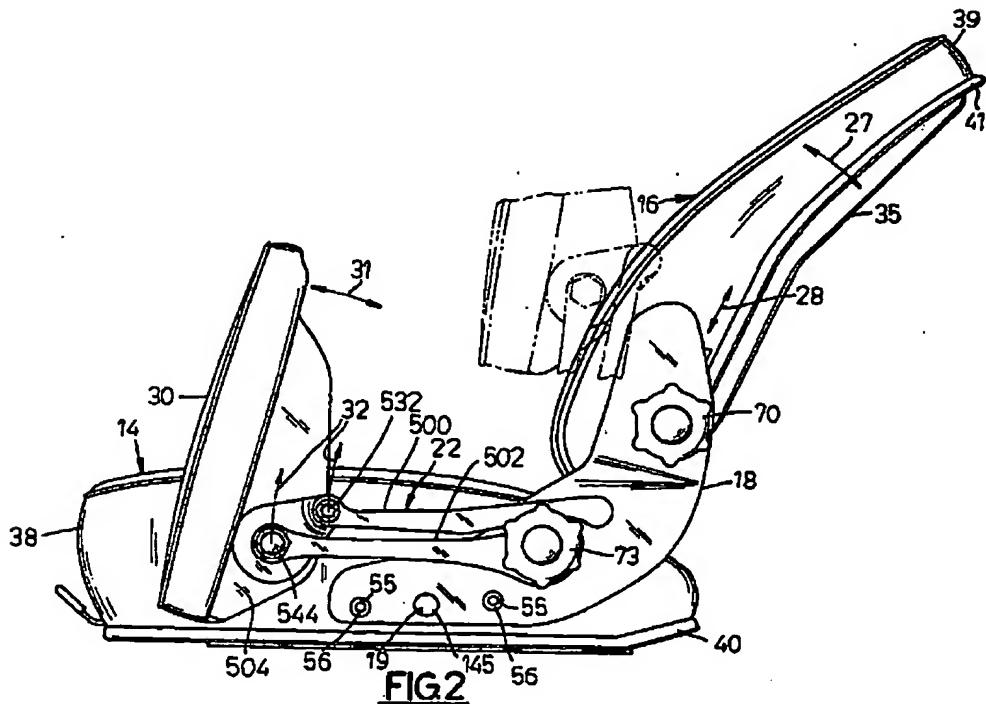
The Swenson et al. Reference

The Applicant respectfully submits that the Swenson *et al.* reference does not teach the subject matter of Claims 4-9 and 14. As noted above, the Applicant has amended the claims that are the object of this rejection so as to clarify that the claimed subject matter is a chair with the adjustable arm and not merely the arm.

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Moreover, the Applicant respectfully submits that the Examiner has modified the limitations of the claims to arrive at subject matter that might be taught by the Swenson *et al.* reference. Specifically, the Examiner states that “[t]he armrest body [of the Swenson *et al.* reference] maintains an orientation substantially parallel to a seat when its (sic) not being pivoted to a non-use position.” Office Communication at 3. The Applicant notes that Fig. 2 of the Swenson *et al.* reference (reproduced below) shows the armrest is a position that is almost perpendicular to the seat.



That the armrest of the Swenson *et al.* reference can assume a position substantially perpendicular to the seat establishes beyond doubt that the arm mechanism of the cited art is different from the claimed subject matter.

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Indeed, while the armrest of the claimed subject matter can deviate from being parallel to the seat when it is being moved from one position to another, even when the armrest of the claimed subject matter is being moved, it does not deviate from its parallel to the seat orientation by an amount substantially more than 45°. This aspect of the present invention is shown in the following pairs of figures, Figs. 11 and 12, Figs. 13 and 14, and Figs. 15 and 16. In each of these pairs of illustrations of the armrest of the present invention, the movement of the armrest is within an arc of less than about 45°. Thus, the armrest of the claimed subject matter is substantially parallel to the seat whereas the armrest of Swenson *et al.* can assume a position that is substantially perpendicular to the seat. This difference precludes any finding that Swenson *et al.* teaches or suggests the claimed subject matter.

In view of this difference, the Applicant respectfully submits that the Examiner has not made a *prima facie* showing of anticipation. Rather, the cited reference discloses something completely different from that which is claimed by the present application. Indeed, because of this difference alone, the Examiner has not made a *prima facie* showing of anticipation. Consequently, the Applicant respectfully submits that the present rejection must be withdrawn.

The Zegeer Reference

The Examiner also rejected Claim 10 as anticipated by the Zegeer reference. The Applicant respectfully traverses this rejection and respectfully submits that it must be withdrawn. Unlike the armrest bracket of the Zegeer reference, which bracket moves up and down frame 22, the armrest bracket of Claim 10 is at a fixed position on the back of a chair incorporating the claimed subject matter.

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Consequently, the Applicant respectfully submits that the claimed subject matter is not anticipated by Zegeer and that the present rejection must be withdrawn.

The Rejections alleging Obviousness

The Examiner rejected Claims 2-3 and 11-12 as obvious in view of Swenson *et al.* Additionally, the Examiner rejected Claims 14 – 15 as unpatentable (as obvious) over Swenson *et al.* in view of Wilkerson. The Examiner also rejected Claim 16 as unpatentable (as obvious) over Zegeer. The Applicant respectfully traverses the Examiner's position, and submits that the substantial differences between the claimed method and the devices disclosed by cited art establishes that the cited art does not render the claimed subject matter obvious.

Claims 2-3 and 11-12

The Examiner alleges that the Swenson *et al.* reference shows all of the teachings of the claimed invention aside from the bracket being at least 6 inches above a rear portion of the seat of the chair. Based on this finding, the Examiner alleges that it would have been obvious to move the bracket taught by Swenson *et al.* to a position at least 6 inches above a rear portion of the seat of the chair.

The Applicant respectfully traverses the Examiner's position and submits that the Examiner has not set forth a *prima facie* showing of obviousness. *Inter alia*, the Examiner has not provided any objective showing of any teaching or suggestion in the art to modify the chair of Swenson *et al.* so as to have a reasonable expectation of success. *In re Rouffet*, 149 F3d 1350, 47 USPQ2d 1453 (Fed. Cir. 1998). For this reason alone, the present rejection must be withdrawn.

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Furthermore, the Applicant notes that modifying the chair of Swenson *et al.* in the manner proposed by the Examiner would defeat the purpose of the adjustable arm of Swenson *et al.* Consequently, the Examiner's proposed modification is inconsistent with the asserted reference, and therefore is improper.

The Applicant begins by noting that the Swenson *et al.* reference discloses a seat for a vehicle. *E.g.*, the title ("Vehicle seat having arm rest adjustment means" emphasis added). Thus, the seat taught by the cited art is one in which the user enters the seat from the side (typically in the US, the user enters the seat from the left side of the vehicle).

This side entry is in marked contrast to the user's entry into the seat of the present invention. The Applicant respectfully submits that one of ordinary skill in the relevant art understands that a user typically enters an office chair (such as the claimed subject matter) from the front, not the side.

Moreover, the Applicant notes that Swenson *et al.* expressly state that: "the arm rest . . . can be swung forward *out of the operator's way . . .*" Col. 1, l. 67 – Col. 2, l. 3 (emphasis added). This teaching is illustrated in Fig. 2 (reproduced above). As can be seen in that figure, when the armrest is swung forward, links 500 and 502 are below the top of the seat. In such a configuration, a user can step over links 500 and 502 and gain access to the seat.

However, if bracket 73 were moved (as the Examiner proposes) upward to a position at least 6 inches above a rear portion of the seat of the chair, it would be at a position such as that of knob 70. In that case, links 500 and 502 would be well above the top of the seat (say a corresponding 6 inches above the top of the seat). These links would then form a barrier to the operator entering or leaving the seat from the side.

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Because, unlike the environment surrounding an office chair, access to a vehicle seat is normally through a door of limited size, placing a barrier 6 inches above the seat would greatly impede a user's access to the seat of the Swenson *et al.* For this reason alone, one of ordinary skill would not be taught or motivated to modify Swenson *et al.* in the manner proposed by the Examiner.

Claims 14 - 15

The Examiner rejected Claims 14 and 15 as obvious over Swenson *et al.* in view of Wilkerson. According to the Examiner, Swenson *et al.* "shows all of the teachings of the claimed invention except the use of a pedestal with a plurality of arms. Wilkerson shows the conventional use of a pedestal with a plurality of legs. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the pedestal of Swenson *et al.*, with the plurality of arms, as taught by Wilkerson in order to provide additional stability to the chair." Office Communication at 4-5. The Applicant respectfully traverses the Examiner's rejection.

The Applicant notes that one of ordinary skill would not anticipate that adding a pedestal with a plurality of arm would add to the stability of the chair of Swenson *et al.* Instead, the Applicant respectfully submits that one of ordinary skill in the art, at the time the invention was made, would have anticipated that by removing the chair and pedestal of Swenson *et al.* from its mounting to the floor of a vehicle (e.g., Fig. 1) and putting it on a plurality of arms, whether the plurality of arms are those of Wilkerson or any other plurality of arms, would reduce the stability of a chair. More particularly, the Applicant notes that many children have toppled chairs on pedestals having a plurality of arms by rocking the chair, but very few people can topple a chair mounted to the floor of a "tractor, construction machine, or the like." (col. 2, l. 51 - 53).

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In other words, the Examiner has not provided any motivation to modify the chair of Swenson *et al.* to arrive at the claimed subject matter. For this reason alone, the present rejection must be withdrawn.

Claim 16

The Examiner rejected Claim 16 as obvious over Zegeer. Specifically, the Examiner alleged that “[t]he method steps as recited would have been incorporated within the use of the invention as taught by Zegeer.” Office Action at 5. The Applicant respectfully traverses the Examiner’s position.

Claim 16 recites the steps of:

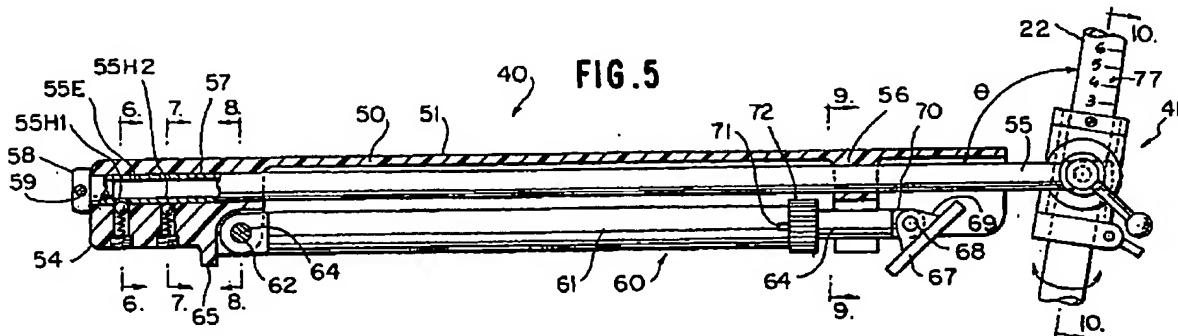
- a) raising the end of the armrest closest to a user’s fingertips to an altitude greater than the altitude of the end of said armrest to said user’s elbow;
- b) repositioning said armrest; and
- c) releasing said distal end in a manner effective to return said distal end to an altitude substantially the same as said medial end of said armrest.

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In marked contrast to the method for repositioning the armrest of the claimed subject matter, to reposition the armrest of the chair disclosed in Zegeer, one must first release the armrest locking mechanism, by for instance, rotating the lever. (See e.g., the mechanism at the adjustable mounting bracket 41 in Fig. 5 reproduced below).



If one were to lift the end of the Zegeer armrest having set screw 59, the locking mechanism remains locked. Consequently, one could not reposition the armrest without some additional step, *i.e.*, rotating the locking mechanism lever.

In contrast, in the claimed subject matter, the action of lifting the end of the armrest closest to a user's fingertips to an altitude greater than the altitude of the end of said armrest to said user's elbow, alone, releases the "armrest locking mechanism". Once the end of the armrest has been lifted, and the "locking mechanism" released, one can reposition the armrest of the present invention without any other unlocking steps.

In sum, Zegeer neither teaches nor suggests the subject matter of Claim 16.

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CONCLUSION

The Applicant petitions 37 CFR § 1.136(a) for an extension of time to respond to the Office Communication of October 4, 2005. Any fee required by this communication (including fees for addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

In view of the present amendments and remarks, the Applicant respectfully submits that the application is now in condition for allowance and respectfully solicits the same at an early date. Nonetheless, if the Examiner has any questions, he is encouraged to call the undersigned at (212) 210-9518.

Respectfully submitted,

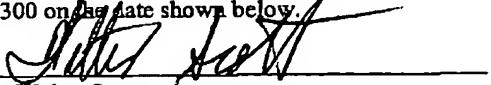


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CERTIFICATION OF FACSIMILE TRANSMISSION

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Walter Scott

March 6, 2006
Date